IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of case

Civil Writ Petition No. 214 (S/S) of 2002

Dhirendra Singh Rawat …….. Petitioner

Versus

State and others ……. Respondents

Date of decision : 1st Oct., 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant

- Whether the order/judgment should be sent to the reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

(Himanshu)
P.A.

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

WRIT PETITION NO. 214 (S/S) OF 2002
(OLD NO. 32700/1995)

Dhirendra Singh Rawat son of Sri Dewan Singh,
Village Nodiyal Gaon, Patti Kapolsue, District
Pauri Garhwal. …….Petitioner.

Versus

1. **State of U.P.**
2. **Board of Revenue, U.P. Lucknow**
   Through its Chariman.
3. **Divisional Commissioner, Garhwal Division**
   Pauri Garhwal.
4. **Collector-cum-District Magistrate, Pauri**
   Garhwal.
5. **Govind Ram son of Sri Pati Ram r/o Village**
   Patal, Patti Khatasue, District Pauri Garhwal.

……..Respondents.

Sri Subhash Upadhyay, learned counsel for the petitioner.
Sri P. Maulekhi, learned Additional Advocate General for the State.
Sri R.K. Shah, learned counsel for the respondent no.5.

Hon'ble Prafulla C. Pant, J.

1. By means of this writ petition, moved under Article 226 of the Constitution of the India, the petitioner has sought writ in the nature of certiorari for quashing the impugned order dated 3.4.1995 (Copy Annexure-3 to the writ petition) and order dated 29.8.1995 both passed by the Divisional Commissioner, Garhwal Division.

2. Brief facts of the case, as narrated in the writ petition, are that the petitioner was initially appointed as Lekhpal and thereafter selected for the post of Assistant Registrar Kanoongo as per the selection list prepared on 4.6.1994 (Copy Annexure 1 to the writ petition). In the said list the petitioner was at serial no. 1 and was promoted and posted as Assistant Registrar Kanoongo vide order dated 4.6.1994 (Copy Annexure-2 to the writ petition). The

respondent no. 5 Sri Govind Ram aggrieved by the said promotion of the petitioner, filed an objection claiming his appointment on the post of Assistant Registrar Kanoongo. The objection of the respondent no.5 is allowed vide order dated 3.4.1995 (Copy Annexure-3 to the writ petition) by the Commissioner Garhwal Division has been challenged by the petitioner in this petition. The petitioner filed a review application against the said order before the Divisional Commissioner and obtained the stay order dated 27.4.1995 (Copy Annexure-4 to the writ petition) fro the said Authority. However, vide order dated 4.10.1995 (Copy Annexure-5A to the writ petition) the petitioner was informed that the review petition of the petitioner has been rejected by the Commissioner by his order dated 29.8.1995 as such he is to reverted as Lekhpal. Aggrieved by the said order of the Commissioner the present writ petition has been filed alleging that the petitioner got promoted after due selection process. The petitioner has further alleged that even in the gradation list of the Lekhpal he was at serial no. 169 as against the respondent no.5 who was at serial no. 223. The order of the Divisional Commissioner has been alleged to be wrong and the illegal.

3. A counter affidavit has been filed on behalf of the respondent no. 3 and 4 in which it is admitted that the petitioner was appointed initially as Lekhpal. However the rest of the contents as alleged in the writ petition are not admitted and it is stated that the impugned orders were rightly passed after consideration of facts and circumstances of the matter. Respondent no.5 has filed a separate

counter affidavit stating that in the year 1992, six Lekhpals (Patwaries) applied for their promotion to the post of Assistant Registrar Kanoongo. A selection committee was constituted vide order dated 25.6.1992 by the District Magistrate and all the applicants were interviewed. Out of the six, three candidates were selected (Copy Annexure CA-1) and the name of the answering respondent no. 5 was at serial no. 3. The first two persons got the appointment as Assistant Registrar Kanoongo as the vacancies were existing for them but as to the respondent no.5 it was directed that he will be appointed as and when vacancy arises. Respondent no.5 in his counter affidavit has further stated that thereafter the petitioner was selected through a different selection list in which this fact was concealed that the respondent no.5 was waiting for the promotion to the post of Assistant Registrar Kanoongo. On being aggrieved the respondent no.5 made a representation to the District Magistrate who gave his report dated 28.4.1995 (Copy Annexure CA-2). It is further alleged in the counter affidavit also that the Commissioner Garhwal Division rightly allowed the representation of the respondent no.5 vide impugned order dated 3.4.1995. It is lastly stated in the counter affidavit of the respondent no. 5 that for selection, for the post of Assistant Registrar Kanoongo, seniority is not the alone criterion. Also it is stated that once the selection process has taken place on 1.7.1992 new selection could not have been done unless the persons selected in the earlier process is given the promotion.

4. I heard learned counsel for the petitioner, learned Standing Counsel and learned counsel for the respondent no. 5 and perused the affidavit, counter affidavits and rejoinder affidavit filed by the parties along with the annexures annexed thereto.

5. The short question for consideration before this court is whether the petitioner is wrongly directed to be reverted as Lekhpal vide impugned orders passed by the respondents no. 3 and 4.

6. Admittedly the petitioner was initially appointed as Lekhpal. It is also not disputed that the petitioner was promoted as Assistant Registrar Kanoongo vide order-dated 4.6.1994. Annexure 1 to the writ petition shows that on 13.5.1994 a selection of the Lekhpals took place for promotion to the post of the Assistant Registrar Kanoongo in which the petitioner was at serial no. 1. Copy of the order dated 4.6.1994 shows that the then District Magistrate in pursuance of the said selection list promoted the petitioner as Assistant Registrar Kanoongo. The main dispute relates to the point that whether the person selected in the year 1992 and was in the waiting list, has a right of being promoted after a year when new selection has taken place. Before further discussions it is pertinent to quote relevant rule relating to promotions from Lekhpals to Assistant Registrar Kanoongo. Rule 8 (2) of the Uttar Pradesh Avar Rajasva Lipik (Registrar Kanoongo and Sahayak Registrar Kanoongo) Seva Niyamavali, 1958 reads as under:

> (2) (क) सहायक रजिस्ट्रार कनूनगोओं की भर्ती के प्रयोजनो के लिए उन लेखपालो मे से जो इस उप–नियम के खण्ड (ख) के

अधीन नामांकित किये गये हों, ज्येश्ठता के आधार पर चयन किया जायेगा, किन्तु अनुपयुक्त व्यक्तियो को नही लिया जायेगा।

टिप्पणी – ऐसा अभयर्थी जो अनुपयुक्त होने के कारण न लिया जाय, केवल उसी अवसर के लिये अनुपयुक्त समझा जायेगा और बाद को किये जाने वाले प्रत्येक चयन मे उसके प्रसंग मे सम्यक रूप से विचार किया जायेगा।

(ख) कलेक्टर प्रत्येक वर्ष सितम्बर मे लगभग सहायक रजिस्ट्रार कनूनगो की जिले की कोटि मे होने वाली रिक्तियो की लगभग संख्या मालूम करेगा और अपने जिले के प्रत्येक परगना अधिकारी से, शीतकालीन दौर के पश्चात ऐसे लेखपालो को, जिनकी संख्या वह निश्चित करेगा, नांमाकित करने के लिए कहेगा, जिन्होने लेखपाल के रूप मे उस वर्श की, जिसमे नामांकन किया जाय, पहली जनवरी को कम से कम 6 वर्षो की सेवा पूरी कर ली है, राज्य की जूनियर या हाई स्कूल परीक्षा (अग्रेजी के साथ) या उसके समकक्ष या उससे ऊॅची परीक्षा उत्तीर्ण की हो, जिनकी आयु उस वर्ष की, जिसमे नामांकन किया जाय, पहली जनवरी को 35 वर्ष से अधिक न हो, और जो सहायक रजिस्ट्रार कानूनगो के पद पर उन्नति पाने के लिए उपयुक्त समझे जाये, किन्तु प्रतिबन्ध यह है कि उन व्यक्तियो को प्राथमिकता दी जाएगी, जिनकी शिक्षा सम्बन्धी योग्यताए और सेवा लेखा अधिक अच्छा होगा।

(ग) – – – – x– – – – – – x – —– – – x – – –

(घ)– – – – x– – – – – – x – —– – – x – – –

(ड.)– – – – x– – – – – – x – —– – – x – – –

(च) उपयुक्त खण्ड (क) के अधीन चुने हुए लेखपालो के नाम उस सूची मे चढ़ाये जायेंगे जो कलेक्टर अपने जिले के लिए रखता है।

सूचीगत अभ्यिार्थियो के नाम उनके चयन के दिनांक के अनुसार रखे जायेंगे, किन्तु प्रतिबन्ध यह है कि एक ही दिनांक पर चुने लेखपालो के पारस्परिक नाम चयन के पूर्व उनके मूल वेतन के अनुसार रखे जायेंगे और यदि उनके वेतन बराबर हो तो उनकी सेवा की दीर्घकालीनता के अनुसार रखे जायेगे। उक्त सूची लेखपालो की संख्या उन रिक्तियो की संख्या की लगभग दो तिहाई होगी जिनकी जिले के सहायक रजिस्ट्रार कानूनगो की कोटि (cader) तीन वर्ष की अवधि मे होने की सम्भावना है, किन्तु जिले के लिए स्वीकृत सहायक रजिस्टार कानूनगो की संख्या की दो तिहाई से कम नही होगी।"

7. From the above rule – -8 (2) it is clear that every year the District Magistrate is required to assess the vacancies likely to fill in next 3 years. It is also clear from the aforesaid rules that he has to select two third number of person of the vacancies which is likely to occur in the next 3 years. Admittedly it is not in dispute that in the year 1992 three persons were selected from amongst the Lekhpals for their promotion to the post of Assistant Registrar Kanoongo and the respondent no.5 stood third in the said list. However, from the record it appears that since only two vacancies occurred in the said year as such only the first two of them in select list could be promoted. Learned counsel for the respondent no. 5 and learned Additional Advocate General argued that unless the respondent no.5 is promoted no new selection process could have taken place. They further argued that the selection list of 1992 was valid for a period of three years. I am unable to agree with the submissions made on behalf of the respondents for the reasons that if their interpretation is accepted, the District Magistrate will never be able to prepare a select list every year. There

is no mention in the rules if any select list has to remain valid for three years. That being so, the interpretation advanced by the respondents on the basis of which the impugned order was passed in wrong as in the said case the above quoted sub rule 2 (kha) cannot be harmoniously complied with rule 2 (cha).

8. Learned counsel for the respondent no. 5 referred to the principle of law laid down in ***Har Govind Singh V. State Bank of India 1995 Alld.L.J. 1710*** and submitted that the validity of the select list does not come to an end on completion of period of one year. The case referred above is given in total different circumstances as against the present case. In the said referred case the promotions were not governed by the Uttar Pradesh Avar Rajasva Lipik (Registrar Kanoongo and Sahayak Registrar Kanoongo) Seva Niyamavali, 1958.

9. One more reason which belies the stand taken by the respondents is that had there been any intention on the part of the legislature to keep the select list valid for three years, apart from expression ‘every year’ in Rule 2(kha), the provision in rule 2 (cha) would not have been there relating to restricting the list only up to two third of the vacancies of the select list of the vacancy likely to occur in the next three years.

10. For the reasons as discussed above this court finds that the petitioner is wrongly being directed to be reverted as Lekhpal vide impugned orders after being selected in the year 1994 on the objection of the respondent no. 5 (who was selected in the year 1992 but

remained in waiting). Therefore, in these circumstances, in the opinion of this court the writ petition deserves to be allowed. Accordingly the writ petition is allowed. Impugned orders dated 3.4.1995 and 29.8.1995 passed by the respondents No.3 &4 are quashed with the observation that it will be open for the respondents to select the respondent no.5 (who is junior to the petitioner) under the rules, if found suitable for promotion in the coming years. No order as to costs.

Dt. 1.10.2004 **(Prafulla C. Pant, J.)**

P. Bandhavakar